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Paper No. 41

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In re Application of
Julio L. Pimentel
Application No. 08/888,202
Filed: July 7, 1997
Attorney Docket No. n/a

OFFICE OF PETITIONS

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed April 7, 2003, to revive the above-identified application.

The petition is **DISMISSED**.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed August 6, 2002, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on November 7, 2002.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D). The instant petition lack(s) item(s) (1).

As to item (1), this application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of August 6, 2002. The proposed reply

required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 1.17(b)), an amendment that *prima facie* places the application in condition for allowance, or the filing of a continuing application. See MPEP 711.03(c)(III)(A)(2). Since the amendment submitted does not *prima facie* place the application in condition for allowance, the reply required must be a Notice of Appeal (and appeal fee) or the filing of a continuing application. Alternatively, the reply requirement may be met by the filing of a submission under 37 CFR 1.129(a) if the above-identified application is eligible for such transitional practice.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
 Box DAC
 Washington, D.C. 20231

By facsimile: (703) 308-6916
 Attn: Office of Petitions

By hand: Office of Petitions
 2201 South Clark Place
 Crystal Plaza 4, Suite 3C23
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Telephone inquiries concerning this decision should be directed to Latrice Bond at (703) 308-6911.



Latrice Bond
Paralegal Specialist
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: "Courtesy Copy of Advisory Action"